

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION1515 Clay Street, 17th Floor  
Oakland, CA 94612Phone: (510) 286-7100  
Facsimile: (510) 286-0687

## MAILING ADDRESS:

P. O. Box 420603  
San Francisco, CA 94142-0603**NOTICE OF PROPOSED RULEMAKING****Subject Matter of Regulations: Employee Notices - Workers' Compensation Benefit Notices and Notice of Employee Rights Upon Termination of Medical Provider Network****Title 8, California Code of Regulations, Sections 9767.16, 9810, 9811, 9812, 9813 and 9813.1.**

**NOTICE IS HEREBY GIVEN** that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 138.3, 138.4, 139.5, 4061, 4616, 4636, 4637, 4658.5, and 5307.3, proposes to adopt and amend regulations within Article 8, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9810, relating to Notices for Injuries Related to Loss of Time or Denial of Claim, and Article 3.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9767.1, relating to Medical Provider Networks

**PROPOSED REGULATORY ACTION**

The Department of Industrial Relations, Division of Workers' Compensation (hereinafter "Division"), proposes to adopt a regulation within Article 3.5, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9767.1, relating to Medical Provider Networks:

Section 9767.16	Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network.
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The Division also proposes to adopt and amend regulations within Article 8, Subchapter 1 of Chapter 4.5 of Title 8, California Code of Regulations, commencing with section 9810, relating to Notices for Injuries Related to Loss of Time or Denial of Claim:

Section 9810	General Provisions;
Section 9811	Definitions;
Section 9812	Benefit Payment and Notices;
Section 9813	Vocational Rehabilitation Notices; and,
Section 9813.1	Supplemental Job Displacement Benefit and Notice of Modified or Alternative Work Notices.

**PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

Notice of Proposed Rulemaking:  
Employee Benefit Notices and Notice of Employee Rights  
Upon Termination of Medical Provider Network

**Date:** December 12, 2006  
**Time:** 10:00 a.m. to 5:00 p.m. or conclusion of business  
**Place:** The Junipero Serra State Building, Auditorium  
320 West 4th Street, Los Angeles

The Junipero Serra State Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request.

**If you will require accommodation to attend the hearing, please contact the State Wide Disability Accommodation Coordinator, Betty Ortiz, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.**

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Division. The written comment period closes at **5:00 p.m., on December 12, 2006.** The Division will consider only comments received by the Division by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m.** on December 12, 2006.

The official record of the rulemaking proceeding will be closed at the conclusion of the public hearing. The Administrative Director will not consider written comments received after the close of the public hearing unless an extension of time in which to receive written comments is announced at the public hearing.

### **AUTHORITY AND REFERENCE**

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 59, 124, 133, 138.3, 138.4, 139.5, 4061, 4616, 4636, 4637, 4658.5, and 5307.3.

Reference is to Labor Code sections 124, 138.7, 139.5, 3208, 3300, 3351, 3381.5, 3700, 3753, 4061, 4616.2, 4635, 4636, 4644, 4650, 4653, 4654, 4658.1, 4658.5, 4658.6, 4661.5, 4700, 4701, 4702, 4703, 4703.5, 4903, and 5402; Insurance Code sections 11651 and 11652; and, Civil Code sections 2330 and 2332.

### **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

Labor Code section 138.3 requires the administrative director to prescribe reasonable rules and regulations to require employers to serve notice on injured employees that they may be entitled to benefits under Division 4 of the Labor Code. Labor Code section 138.4 requires the administrative director to prescribe reasonable rules and regulations for service on the employee (or employee's dependents, in the case of death), notices dealing with the payment, nonpayment, or delay in payment of temporary disability, permanent disability, and death benefits; notices concerning the provision of vocational rehabilitation services; notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation; and, an accounting of benefits paid.

Labor Code section 4616(a) provides that an insurer or employer may establish or modify a medical provider (hereinafter "MPN") network for the provision of medical treatment to injured employees. Labor Code section 4616(g) provides that the administrative director shall develop regulations that establish procedures for purposes of making modification to an employer's medical provider network.

These proposed regulations implement, interpret, and make specific these sections of the Labor Code as follows:

- Proposed new section 9767.16 will require an employer or insurer planning to terminate or otherwise cease the use of an MPN to give each covered employee written notice, not less than 45 calendar days in advance, of the date on which the

use of the MPN will end. The notice to employees will be required to be made available in both English and Spanish.

The proposed regulation will also prescribe the required contents of the notice, including informing covered employees that for injuries occurring on or after the termination or cessation of use of the MPN, they will have the right to either continue treatment with their current physician or select their own physician 30 days after the date they reported their injury, pursuant to Labor Code section 4600.

The proposed regulation will also require the notice to inform covered employees that any injured worker receiving treatment at the time of the effective date of termination or cessation of use of the MPN may be entitled to continuity of care, pursuant to section 9767.10 of these regulations, to continue treatment with their terminated MPN provider. If it is the employer that terminates or otherwise ceases use of the MPN, the regulation will require the employer to advise all covered employees of the insurer's liability for continuing care for ongoing claims, and the potential penalties that may be imposed by the WCAB for unreasonable delay or interruption of that care. If it is the insurer that terminates the MPN, the regulation will require the insurer to advise all covered employees of the insurer's liability for continuing care for ongoing claims, and the potential penalties that may be imposed by the WCAB for unreasonable delay or interruption of that care.

The proposed regulation will also require the notice to provide the name, address and telephone number of the person to contact with questions concerning the termination or cessation of use of the MPN, including any questions about continuity of care arrangements.

The proposed regulation will also require the employer or insurer to inform the Division, not less than 30 calendar days in advance, of the termination or cessation by using the "Notice of Material Modification" form set forth at section 9767.8 of the MPN regulations.

- Section 9810 describes the general provisions governing the correct procedure and format for notice letters used to inform injured workers about their entitlement to workers' compensation benefits.

The proposed amendments to section 9810 will allow benefit notices, excepting those mandatory notices set forth in statute or regulation, to be produced in any format developed by the claims administrator, so long as each benefit notice accurately contains all relevant notice elements required by either statute or regulation. Benefit notices will be required to identify and provide contact information for the claims administrator, to identify the individual claims adjuster responsible for adjusting the employee's claim, and identify any attachments sent with the notice. The regulations will also require the administrative director to

make sample notices that comply with these requirements available on the DWC website.

The proposed amendments will also require a claims administrator to make available to an employee, upon request, copies of medical reports, relevant to any benefit notice issued, which have not already been provided, or which are not required to be provided along with a notice.

The proposed amendments will require a claims administrator to send a represented employee's attorney a copy of any benefit notice pamphlet sent to the represented employee.

The existing regulation requires that copies of all benefit notices sent to injured workers shall be maintained by the claims administrator. The proposed amendments will require that the notice copies be maintained in the claim file, and provide that in lieu of retaining a copy of any attachments to the notice, the claims administrator could identify the attachments by name and revision date on the notice. The proposed amendments will also provide that the required copies could be maintained in paper or electronic form.

The proposed amendments will also require that all benefit notices be made available in both English and Spanish.

The proposed amendments will add a reference citation to Labor Code section 124.

- Section 9811 provides definitions of the term used in the benefit notice regulations.

The proposed amendments to section 9811 will add references to a self-administered joint powers authority, a self-administered legally uninsured, and an administrator for an alternative dispute resolution (ADR) program established under Labor Code section 3201.5 or 3201.7 to the definition of the term "claims administrator."

The proposed amendments will delete the existing definition of the term "Date of knowledge of injury."

The proposed amendments will substantially revise the current mandatory statement of employees' remedies, and require *every* benefit notice, excepting those mandatory notices set forth in statute or regulation, to include the mandatory statement of employee remedies. An alternative statement of employee remedies will be prescribed for employees subject to an alternative dispute resolution (ADR) program under Labor Code sections 3201.5 or 3201.7.

The proposed amendments will delete a redundant reference to "lost time beyond the date of injury" from the existing definition of "Injury."

The proposed amendments will add a definition of the term “permanent and stationary status” for any permanent disability evaluation performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005. The term will be defined as the point when a ratable medical report states that the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

The proposed amendments will add a reference citation to Labor Code sections 3201.5 and 3201.7.

- Section 9812 prescribes the required timeframes for sending benefit notices and the content for notices dealing with each type of benefit to which an injured worker might be entitled.

The proposed amendments to section 9812 will require a claims administrator, unless it had already done so, to include with various benefit notices a copy of the most recent DWC informative pamphlet concerning temporary disability benefits, permanent disability benefits or the Agreed Medical Evaluator/Qualified Medical Evaluator (“AME/QME”) medical evaluation process.

The existing regulations provide that if, after a claims administrator has sent a delay notice to advise an employee that the claims administrator cannot make a decision, the claims administrator is unable to make a decision by the date specified in the delay notice, the claims administrator must send a new delay notice within 5 days after the previously specified determination date.

The proposed amendments will provide that if a claims administrator cannot make a determination on by the date specified in a notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the determination date specified in the previous notice, notifying the injured worker of the new date by which the claims administrator expected the determination to be made.

The proposed amendments will require a claims administrator to include with various notices an explanation of the current AME/QME process for resolving medical disputes. Different specific content will be required depending on whether the employee is represented or unrepresented.

The proposed amendments will require a “Notice of Changed Benefit Rate, Payment Amount or Schedule” to be sent to the employee upon a change in the employee’s benefit payment amount.

The proposed amendments will require a permanent disability notice for injuries prior to 1991 where the existence of permanent disability is known, to advise the injured worker of the date on which payments could be expected to begin.

For injuries occurring on or after January 1, 1994, when an injury becomes permanent and stationary, the proposed amendments will require that, together with the last payment of temporary disability or within 14 days of knowledge that the injury is permanent and stationary or has caused permanent disability, the claims administrator shall provide notice of the procedures available to obtain a QME or AME evaluation.

For injuries occurring on or after January 1, 2005, and involving permanent disability, the claims administrator shall, concurrently with any increased or decreased payment, notify the injured worker of any increase or decrease in the amount of the injured worker's permanent disability payments, pursuant to Labor Code section 4658, subdivision (d) resulting from the employer's offer of regular, modified or alternative work and acceptance by the injured worker; or resulting from the employer's failure to offer, the employer's early termination of, or the injured worker's refusal to accept the employer's offer of, regular, modified or alternative work. The information will be required to be given in the appropriate PD payment start notice, PD payment resumption notice or notice of change in rate, payment amount or payment schedule.

The proposed amendments will require that for all claims reported on or after April 19, 2004, if an injured worker is entitled to medical care under Labor Code section 5402(c), the claims administrator shall advise the injured worker to send all bills for such treatment to the claims administrator for consideration of payment unless the injured worker has done so already.

The proposed amendments will require that a copy of any Notice Denying Liability for All Compensation Benefits shall be served on all lien claimants or all persons or entities who can reasonably be identified by the claims administrator from information in the claims file to be potential lien claimants on account of their having furnished benefits, goods or services for which a lien may be filed under Labor Code sections 4903 through 4906, inclusive.

The proposed amendments will require that for claims reported on or after April 19, 2004, regardless of the date of injury, if a claims administrator sends a notice of delay in its decision whether to accept or deny liability for the claim, the notice shall include an explanation of the employee's rights under Labor Code section 5402(c). (Section 5402(c) provides that within one working day after an employee files a claim form, the employer shall authorize the provision of all treatment, consistent with the applicable treatment guidelines, for the alleged injury and shall continue to provide treatment until the date that liability is rejected.) The notice will be required to advise the injured worker that the employer's liability for medical treatment under section 5402(c) is limited to ten thousand dollars (\$10,000).

The proposed amendments will add a reference citation to Labor Code sections 4062.1, 4658(d) and extend the reference to section 4903(a) to sections 4903 through 4906.

- Section 9813 prescribes the required timeframes for sending notices, and the required content for each notice, for vocational rehabilitation benefits.

The proposed amendments to section 9813 will state that the section shall not apply to dates of injury on or after January 1, 2004.

The proposed amendments will provide that if a claims administrator cannot make a determination by the date it specified in a notice to the injured worker, the claims administrator shall send a subsequent notice to the injured worker, not later than the determination date specified in the previous notice, notifying the injured worker of the new date by which the claims administrator now expects the determination to be made.

The proposed amendments will eliminate any reference to the RU 101 case initiation document.

The proposed amendments will require that if vocational rehabilitation benefits were being denied on the basis that the employee is not medically eligible, unless a copy has already been provided, the claims administrator shall provide a copy of the DWC informative pamphlet “QME/AME Fact Sheet” to the employee along with the notice of denial.

The proposed amendments will update the references to the 1994 version of the “Help in Returning to Work” informational pamphlet to the current version of the pamphlet set forth in Title 8, California Code of Regulations, section 10133.2.

The proposed amendments will clarify that the vocational rehabilitation notices for injuries occurring in 1994 only apply to dates of injury on or after January 1, 1994 through and until December 31, 2003.

- Proposed new section 9813.1 will prescribe required timeframes for sending notices, and require the use mandatory form notices prescribed by the applicable regulations, for supplemental job displacement benefits and offers of regular, modified or alternative work.

## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The requirement to provide notices to injured workers of their entitlement to various workers’ compensation benefits is a statutory mandate. The regulations only provide the procedures to be used to provide these notices.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses



within the State of California, or (3) affect the expansion of businesses currently doing business in California.

- Effect on Housing Costs: None.
- Cost impacts on representative private persons or business: The proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The requirement to provide notices to injured workers of their entitlement to various workers' compensation benefits is a statutory mandate. The regulations only provide the procedures to be used to provide these notices. There will be costs for claims administrators to train their employees on the new notice requirements, and claims administrators that use computerized systems to generate benefit notices will have to adjust their systems to produce the amended and newly required notices.

### **EFFECT ON SMALL BUSINESS**

The Administrative Director has determined that the proposed regulations will not affect small businesses. The businesses that are subject to the proposed regulations are insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, none of which qualify as "small businesses."

### **FISCAL IMPACTS**

- Costs or savings to state agencies or costs/savings in federal funding to the State: There may be administrative costs to the Division implement the regulation and provide a set of sample benefit notices. These costs will be addressed through the normal budget process.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention will be more effective in carrying out the purpose for which the actions are proposed or will be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS**

Pursuant to Government Code section 11346.45, the text of the draft proposed regulations was made available for pre-regulatory public comment by and advisory group of interested stakeholders and the general public through a posting on the Division's Internet message board (the DWC Forums).

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking comments, copies of the three informative benefit pamphlets referred to in the proposed regulations ("TD Fact Sheet," "QME/AME Fact Sheet" and "Permanent Disability Fact Sheet"), and the Economic and Fiscal Impact Statement (Form 399). Also included are any studies and documents relied upon in drafting the proposed regulations. As public comments are received during the rulemaking process, they will be added to the rulemaking file.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current "Benefit Notice Regulations" rulemaking.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the headquarters of the Division of Workers' Compensation, 1515 Clay Street, Oakland, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

## **CONTACT PERSON**

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray, Regulations Coordinator

Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

Inquiries may be submitted by e-mail to: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

The telephone number of the contact person is (510) 286-7100.

### **BACKUP CONTACT / PERSON CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

James M. Robbins  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The telephone number of the backup contact person is (510) 286-7100.

### **AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING**

Upon closure of time for receipt of public comments, the Administrative Director may adopt the proposed rulemaking substantially as described above or may modify it if such modifications are sufficiently related to the original text.

With the exception of technical, grammatical or other non-substantive changes, if the Administrative Director makes any changes to the proposed regulations as a result of the public hearing and public comment received, the full text of such modifications to the proposed rulemaking, with changes clearly indicated, will be made available for public comment 15 days prior to their adoption. Notice of the modified text will be mailed to those persons who submit written or oral comments related to the proposed rulemaking or who request notification of any changes to the proposed rulemaking.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: [www.dir.ca.gov](http://www.dir.ca.gov)

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the proposed amendments to the benefit notice regulations will appear in Title 8, California Code of Regulations, commencing with section 9810 and the proposed Notice of Employee Rights Upon Termination or Cessation of Use of Medical Provider Network will appear at Title 8, California Code of Regulations, 9767.16.

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